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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

RelaDyne West, LLC,

Plaintiff,

vs.

Isaiah Kingston and Jacob Kingston,

Defendants.

COMPLAINT

(JURY DEMANDED)

Case No.: 1:18-cv-00103

Judge: Paul M. Warner

Plaintiff RelaDyne West, LLC (“RelaDyne West”), for its Complaint against Defendants, states and alleges as follows:

INTRODUCTION

On September 2, 2016, RelaDyne West entered into an asset purchase agreement (the “Purchase Agreement”) with Cardwell Distributing, Incorporated (“Cardwell”), United Fuel Supply L.L.C. (“United Fuel”), and Defendants to purchase substantially all of Cardwell’s assets (the “Assets”). Defendants agreed to indemnify RelaDyne West for all damages arising out of certain liabilities that RelaDyne West did not purchase under the Purchase Agreement, including liabilities related to taxes. After the closing of the Purchase Agreement on September 30, 2016 (the “Closing”), RelaDyne West paid on behalf of Cardwell \$813,212.50 in unpaid taxes (the

“Unpaid Taxes”). Despite demand, Defendants have refused to indemnify RelaDyne West for the Unpaid Taxes. Accordingly, RelaDyne West brings this lawsuit because Defendants breached their indemnification obligations under the Purchase Agreement.

PARTIES

1. RelaDyne West is a Delaware limited liability company. RelaDyne West’s sole member is RelaDyne LLC, a Delaware limited liability company. RelaDyne LLC’s sole member is REL II LLC, a Delaware limited liability company. REL II LLC’s sole member is REL I LLC, a Delaware limited liability company. REL I LLC’s sole member is RelaDyne, Inc. (“RelaDyne”) a Delaware corporation with its principal place of business located at 8280 Montgomery Road, Suite 101, Cincinnati, Ohio 45236. RelaDyne distributes lubricants, fuels, diesel exhaust fluids, filtration, and chemical and cleaning products.

2. Upon information and belief, Defendants are residents of Box Elder County in the State of Utah. Upon information and belief, Defendants were officers or directors of Cardwell or its sole shareholder, United Fuel.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because RelaDyne West’s citizenship for diversity jurisdiction purposes is Delaware and Ohio, Defendants are domiciled in Utah, and the amount in controversy exceeds \$75,000.

4. The Court has personal jurisdiction over Defendants because Defendants reside in Utah.

5. Venue is proper in the United States District Court for the District of Utah because Defendants reside in Utah.

BACKGROUND

6. Before September 2, 2016, Cardwell was engaged in the business of supplying lubricants, motor fuels, and fleet fueling services to industrial, commercial, and retail petroleum customers (the “Business”). United Fuel is Cardwell’s sole shareholder.

7. On September 2, 2016, RelaDyne West entered into the Purchase Agreement with Cardwell, United Fuel, and Defendants to purchase substantially all of the Assets. A copy of the Purchase Agreement is attached hereto as **Exhibit A**.

8. Under the Purchase Agreement, Defendants agreed to indemnify, defend, and hold harmless RelaDyne West from, against, and with respect to, and to compensate and reimburse RelaDyne West for any and all losses, liabilities, fees, damages, costs, and expenses of any kind or character arising out of or relating to, among other things, the “Excluded Liabilities.” (Ex. A § 5.1.)

9. The Excluded Liabilities expressly included all liabilities related to taxes. (*Id.* § 1.3(b).)

10. If Cardwell failed to pay any of the Excluded Liabilities, or if RelaDyne West reasonably determined that failure to make payments impaired its use or enjoyment of the Assets, RelaDyne West could elect to make all such payments directly and be promptly reimbursed for the amount RelaDyne West paid. (Ex. A § 6.5.)

11. Following the Closing, RelaDyne West paid the Unpaid Taxes on behalf of Cardwell.

12. The Unpaid Taxes constitute Excluded Liabilities under the Purchase Agreement, and RelaDyne West was permitted to pay such Excluded Liabilities on behalf of Cardwell in accordance with the Purchase Agreement § 6.5.

13. Pursuant to the Purchase Agreement § 5.1, Defendants must indemnify, defend, and hold harmless RelaDyne West from all damages relating to the Excluded Liabilities.

14. On May 25, 2017, RelaDyne West sent a written demand to Defendants seeking indemnification for the Unpaid Taxes. A copy of the written demand is attached hereto as **Exhibit B**.

15. Despite RelaDyne West's demand, Defendants have refused to indemnify RelaDyne West for the Unpaid Taxes.

COUNT I
Breach of Contract

16. All previous paragraphs are realleged and incorporated herein by reference.

17. On September 2, 2016, RelaDyne West and Defendants entered into the Purchase Agreement.

18. RelaDyne West has fully performed all of its obligations under the Purchase Agreement.

19. Pursuant to the Purchase Agreement, Defendants must indemnify, defend, and hold harmless RelaDyne West from all damages relating to the Excluded Liabilities.

20. Following the Closing, RelaDyne West paid on behalf of Cardwell the Unpaid Taxes.

21. The Unpaid Taxes constitute Excluded Liabilities under the Purchase Agreement.

22. Defendants failed to indemnify RelaDyne West in the amount of the Unpaid Taxes.

23. Defendants therefore breached the Purchase Agreement.

24. Because of Defendants' breach, RelaDyne West has been damaged in the amount of \$813,212.50, plus attorney's fees to be determined at trial.

JURY DEMAND

25. RelaDyne West demands a jury trial on all issues triable to a jury.

WHEREFORE, Plaintiff RelaDyne West, LLC requests that the Court enter an order granting the following relief:

1. Awarding RelaDyne West judgment on its claims of \$813,212.50;
2. Awarding RelaDyne West its fees and costs, including attorney's fees; and
3. Granting such other and further relief as the Court deems just and equitable.

Dated: August 29, 2018.

JONES WALDO HOLBROOK & McDONOUGH PC

By: /s/ Nathan D. Thomas

Nathan D. Thomas

C. Michael Judd

JONES WALDO HOLBROOK & McDONOUGH PC

Attorneys for Plaintiff RelaDyne West, LLC